

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

EDWIN CARTON et al.,

Plaintiffs,

vs.

B&B EQUITIES GROUP, LLC et al.,

Defendants.

2:11-cv-00746-RCJ-PAL

ORDER

This case arises out of a set of complex life insurance investments. Pending before the Court are: (1) Defendant Maureen Torkelson's Motion for Judgment on the Pleadings (ECF No. 157);¹ (2) Plaintiffs' Motion for Leave to file a Second Amended Complaint (ECF No. 163);² (3) Defendants Robert G. Burns, Kenneth D. Huntley, and the Kenneth D. Huntley Irrevocable Life Insurance Trust Motion for Determination of Good Faith Settlement (ECF No. 165); (4) Torkelson's Motion for Determination of Good Faith Settlement (ECF No. 167);³ and (5) the Report and Recommendation ("R&R") (ECF No. 181) of the magistrate judge recommending that the Answers of Defendants Robert L. Eberle, B&B Equities Group, LLC ("B&B"), Global

¹Plaintiffs have not timely responded to this motion despite two stipulations to extend time to respond, presumably because Plaintiffs have settled with Torkelson. Normally, failure to respond would constitute consent to granting the motion, *see* Local R. 7-2(d), however, due to the settlement, the motion for judgment on the pleadings is moot.

²No Defendant has timely opposed this motion.

³Plaintiffs have filed responses to the motions for determination of good faith settlement in which they essentially join the motions. No party has timely opposed the motions.

1 Equity Resources, LLC, Pro Financial Group, Inc., Pro Fi Group, Inc., and Estate Planning
2 Solutions Network, LLC be stricken and that default judgment be entered against those
3 Defendants.⁴

4 First, the Court denies the motion for judgment on the pleadings as moot, as Torkelson
5 has settled with Plaintiffs. Second, the Court grants the motion to file a second amended
6 complaint, as no Defendant has objected. Third, the Court adopts the R&R, and accordingly
7 strikes the answers of Defendants Robert L. Eberle, B&B Equities Group, LLC (“B&B”), Global
8 Equity Resources, LLC, Pro Financial Group, Inc., Pro Fi Group, Inc., and Estate Planning
9 Solutions Network, LLC, and grants default judgment against those Defendants. Plaintiffs shall
10 submit a proposed form of judgment. Finally, the Court will address the Motions for
11 Determination of Good Faith Settlement below.

12 **I. FACTS AND PROCEDURAL HISTORY**

13 Stranger-originated life insurance (“STOLI”) arrangements have become increasingly
14 common over the past decade. *See Sun Life Assurance Co. of Canada v. Berck*, 770 F. Supp. 2d
15 728, 729–30 (D. Del. 2011). In a typical STOLI scheme, a speculator collaborates with an
16 elderly individual who has a high net worth in obtaining a life insurance policy against the life of
17 the wealthy individual. *See generally* 3 Leo Martinez et al., *New Appleman Insurance Law*
18 *Practice Guide* § 34.09[3] (2011). The wealthy individual is often promised cash upon the future
19 sale of the policy or enticed to enter the arrangement through the promise of two years of free life
20 insurance. The speculator provides non-recourse financing to purchase the policy—secured by
21 the policy—which comes due after the two-year contestability period during which the insurer
22 has to challenge the policy. If the insured dies within the two-year contestability period, the
23 speculator is repaid, with interest, out of the proceeds of the policy. If the insured survives the
24

25 ⁴No party has objected to the R&R, and the deadline to do so was September 9, 2012.

1 two-year contestability period, there are two ways he or she may repay the speculator. First, the
2 insured may pay the outstanding debt and accrued interest and retain the policy. This option is
3 generally less attractive because the interest rates are often high or because the insured was
4 promised a portion of the proceeds upon the sale of the policy. Second, the insured may transfer
5 the policy to the speculator to satisfy the debt, and the speculator may then sell the policy on the
6 secondary market. These arrangements ultimately amount to unlawful wagering and have
7 generally been disfavored by courts. *See Berck*, 770 F. Supp. 2d at 730.

8 Plaintiffs Edwin and Lonnie Carton were first introduced to STOLI transactions by
9 Defendant Bruce Plotnick, whom they met at a financial planning seminar in the early to mid
10 2000's. (First Am. Compl. 12, July 12, 2011, ECF No. 43). Plotnick was the featured lecturer at
11 the seminar and is the principal employee and owner of Defendant Estate Planning Solution
12 Network ("EPSN"). (*Id.* 7). Plotnick suggested the Cartons invest their retirement funds in a
13 concept called "premium financing" through Defendant Robert Koppel ("R. Koppel"). (*Id.*).
14 Plotnick and R. Koppel told the Cartons that B&B Equities Group, LLC ("B&B"), a Nevada
15 limited liability company whose managing members are Defendants R. Koppel and Robert
16 Eberle, would organize limited liability companies which would be assigned the rights to the life
17 insurance policies of the insured third-parties and would assume the liabilities in funding the
18 policies. (*Id.* 13). The Cartons were then informed they would receive an ownership interest in
19 these limited liability companies and were guaranteed a return of 20% on their investment. (*Id.*).
20 The Cartons were also told that the insurance premiums would be paid by the limited liability
21 companies for a two year period, after which they would be repaid in one of two ways: (1) the
22 insured would keep the policy and pay off the loan with interest, or (2) the insured would sell the
23 policy on the secondary market. (*Id.* 10). The Cartons claim they were under the impression that
24 this type of transaction was legal and that the insurance company would have full knowledge of
25 the arrangement. (*See* Opp'n to Mot. to Dismiss 9, ECF No. 113).

1 On July 16, 2008, the Cartons invested \$700,000 with B&B through Plotnick and R.
2 Koppel. (First Am. Compl. 14). The investment was spread over seven insurance policies
3 (collectively, “the Policies”), which insured six individuals (collectively “the Insureds”). (*Id.* 17).
4 Three of the Policies were through Defendant American General Life Insurance Co. (“American
5 General”) and insured Defendants–Insureds Thomas E. Colbert, Wanda D. Dean, and Kenneth D.
6 Huntley. (*Id.*). Thomas Colbert is a resident of Nevada, Wanda Dean is a resident of California,
7 and Kenneth Huntley is a resident of Iowa. (*Id.* 7–8). Three of the Policies were through
8 Defendant Aviva Life and Annuity Co. (“Aviva”) and insured Defendants–Insureds Kenneth D.
9 Huntley, Leon E. Dean, and Samuel L. Diggle. (*Id.* 17). Leon Dean is a resident of California
10 and Samuel Diggle is a resident South Carolina. (*Id.* 7–8). The final policy was through Americo
11 Financial Life & Annuity Insurance Co. (“Americo”) and insured Defendant–Insured Gloria Diaz
12 Rivera, a resident of Puerto Rico. (*Id.* 8, 17). The face amounts of these policies ranged from
13 \$600,000 to \$3,000,000. (*Id.* 17). The beneficiaries of the Policies were irrevocable life
14 insurance trusts that bore the names of the respective Insureds, e.g., “the Kenneth D. Huntley
15 Irrevocable Life Insurance Trust” (collectively, the “ILITs”). (*Id.* 8, 18). The Insureds served as
16 trustees for their respective ILITs. (*Id.* 19).

17 On the American General applications for life insurance, the Insureds failed to answer the
18 question that asked for information about the “Premium Payor” if it were different from the
19 policy owner, even though third parties, viz., Plaintiffs, were in fact providing financing to pay
20 the policy premiums. (*Id.* 26–28). On the Aviva applications for life insurance, the Insureds
21 failed to inform Aviva of the premium financing arrangement. (*Id.*).

22 The Insured signed promissory notes in their capacities as trustees of their respective
23 ILITs, promising to repay the loans obtained from the Cartons and agreeing to an interest rate of
24 20% per annum on those loans. (*Id.*). This amount became payable either: (a) the day following
25 the two year anniversary of the note; (b) the date of the death of the insured; (c) the date of any

1 breach; or (d) the date of any default. (*Id.* 20). Limited liability companies were created bearing
2 the names of the Insureds (Plaintiffs Kenneth Huntley II, LLC; Kenneth Huntley IV, LLC; Leon
3 Dean II, LLC; Gloria Diaz II, LLC; Thomas Colbert V, LLC; Wanda Dean II, LLC; and Samuel
4 Diggle II, LLC) (collectively, the “LLCs”), and the Insureds executed collateral assignments
5 assigning and pledging the insurance policies to the LLCs as collateral to secure the loans
6 financing the first two years of premium payments. (*Id.* 21). The Cartons obtained an interest in
7 the LLCs reflecting the percentage of the funding they provided for the respective life insurance
8 policy premiums, and in August 2008 they received a package of documents that included the
9 insurance application for each policy, the secured promissory note, the collateral assignment, and
10 other relevant documents. (*Id.* 16, 25).

11 The loans were all set to expire between June and September of 2009. (*Id.* at 27–29).
12 However, in July of 2009, the Cartons received letters informing them that additional investors
13 had been brought in to pay a third year of premiums on four of the Policies, thus decreasing the
14 Cartons’ percentage interest in the Policies. (*Id.* 25–26). None of the Policies were sold, and
15 apparently all of the policies have since lapsed for non-payment. (*See* Mot. to Dismiss 5, ECF
16 No. 90). The Cartons never received their principal or the guaranteed interest on their
17 investment. (First Am. Compl. 26–30).

18 The Cartons sued the following Defendants in this Court: B&B, Global Equity
19 Preservation, Inc. (“Global Preservation”); Global Equity Resources, LLC (“Global Resources”);
20 Eagle Investment Corporation of America; Pro Financial Group, Inc. (also registered under the
21 name “Pro Fi Group”); R. Koppel; Robert Eberle; Steve Koppel (a shareholder and officer of
22 B&B) (“S. Koppel”); EPSN; Plotnick; the Insureds; the ILITs who were named as beneficiaries
23 of the Policies; Aviva; American General, Americo, and others. (*See* Compl., ECF No. 1).
24 Plaintiffs brought fourteen nominal causes of action. (*See id.*). Americo included third-party
25 claims, crossclaims, and counterclaims in its Answer to the Complaint. The Hon. Judge Kent J.

1 Dawson recused himself, and the Clerk reassigned the case to this Court.

2 Plaintiffs filed the First Amended Complaint (“FAC”), which joins the LLCs as Plaintiffs
3 and lists the same fourteen nominal causes of action: (1) Securities Fraud under § 10(b) of the
4 Securities Exchange Act and SEC Rule 10b-5; (2) Declaratory Judgment (rescission); (3)
5 Declaratory Judgment (refund of premiums); (4) Securities Fraud under Nevada Revised Statutes
6 (“NRS”) section 90.660; (5) Fraud; (6) Constructive Fraud; (7) Breach of Contract (B&B
7 Investment Agreements); (8) Breach of Contract (Loan Documents); (9) Foreclosure; (10) Unjust
8 Enrichment; (11) Injunctive Relief; (12) Breach of Fiduciary Duty; (13) Deceptive Trade
9 Practices under NRS Chapter 598; and (14) Professional Negligence. (*See* Am. Compl., July 12,
10 2011, ECF No. 43). Defendant Pro Fi Group, Inc. included counterclaims with its Answer to the
11 FAC. Americo included third-party claims, crossclaims, and counterclaims in its Answer to the
12 FAC.

13 The Court granted American General’s and Aviva’s separate motions to dismiss and
14 denied Defendants’ Samuel Diggle’s and the Samuel L. Diggle Irrevocable Life Insurance Trust’s
15 motion to dismiss. In substance, the Court ruled that the Insureds never intended to repay the
16 premium payments, but that the transactions were structured to ensure free life insurance to the
17 Insureds for two years, after which the Policies would be sold on the secondary market to repay
18 the investors. The Court also found that the ILITs and LLCs were created to hide the investors’
19 interests in the Policies from the insurers. The STOLIs were therefore invalid and void ab initio
20 under the respective laws or public policies of Nevada, California, Iowa, and South Carolina, in
21 which states the STOLIs were issued. The Court ruled that the Cartons had standing not because
22 of their interests in the Policies, which were void, but rather because the insurers held funds that
23 rightfully belonged to the Cartons, i.e., under an unjust enrichment theory. The Court ruled that
24 the Cartons’ claims for declaratory and injunctive relief against the insurers therefore depended
25 upon their unjust enrichment claim, which the Court dismissed for failure to state a claim

1 because it was not inequitable for the insurers to retain the premiums under the present
2 circumstances, but that, on the contrary, it would be inequitable to order disgorgement of funds
3 from an innocent party to a party that had notice of facts clearly making the agreement void. The
4 insurers were themselves victims of the STOLI scheme with no knowledge thereof or complicity
5 therein, and who bore the risk of having to pay under the Policies, whereas the Cartons and other
6 investors were clearly on notice of the scheme even if they had no illicit intent. The Court
7 therefore dismissed the claims against the insurers, without prejudice, permitting Plaintiffs to
8 amend to plead facts indicating that the insurers had notice of the illicit scheme such that equity
9 might permit an unjust enrichment claim.

10 The Court denied Defendants' Samuel Diggle's and the Samuel L. Diggle Irrevocable
11 Life Insurance Trust's motion to dismiss for lack of subject matter jurisdiction. The Court ruled
12 that the state law claims against those Defendants were sufficiently related to the securities fraud
13 issues to support supplemental jurisdiction. All the claims arose out of the same "nucleus of
14 operative fact": the STOLI schemes. The Court also ruled that the LLCs could still sue and be
15 sued under Nevada law despite having had their charters revoked, and that the Cartons had
16 standing to sue those Defendants because Plaintiffs' use of an LLC as a vehicle for their
17 investments did not obviate their injury in fact.

18 The Court granted Plaintiff's motion to dismiss the counterclaims of certain Defendants
19 because the "counterclaim" in fact set forth no counterclaims in the pleading so titled. The Court
20 also struck certain Defendants' pleadings for failure to comply with the Rule 11 signature
21 requirement.

22 Finally, the Court noted that if Defendants ESPN, Pro FI, Pro Financial, B&B, and Global
23 Resources did not obtain legal representation by December 17, 2011, they would risk entry of
24 default judgment, because corporate entities could only appear in court through admitted counsel.

25 The parties later stipulated to dismiss all claims against Americo and the Diaz entities

pursuant to a settlement agreement. Plaintiffs voluntarily dismissed as against Defendants Crump Insurance Services, Inc., f.k.a. Bisys Insurance Services, Inc., and Kyle Bloss.

Torkelson filed a Motion for Judgment on the Pleadings. Plaintiffs filed a Motion for Leave to File a Second Amended Complaint. Defendants Robert G. Burns, Kenneth D. Huntley, and the Kenneth D. Huntley Irrevocable Life Insurance Trust (collectively, “Burns and Huntley”) filed a Motion for Determination of Good Faith Settlement, as did Torkelson. Finally, the magistrate judge submitted an R&R recommending that the Answers of Defendants Robert L. Eberle, B&B Equities Group, LLC (“B&B”), Global Equity Resources, LLC, Pro Financial Group, Inc., Pro Fi Group, Inc., and Estate Planning Solutions Network, LLC be stricken and that default judgment be entered against those Defendants.

II. LEGAL STANDARDS

Under Nevada law, a court’s declaration that a settlement is entered into in good faith has specific legal effects:

1. When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution and for equitable indemnity to any other tortfeasor.

2. As used in this section, “equitable indemnity” means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

Nev. Rev. Stat. § 17.245. In 1983, a court of this District had anticipated that the Nevada Supreme Court would adopt the rationale of the California courts in interpreting “good faith” under the statute. *See Velsicol Chem. Corp. v. Davidson*, 811 P.2d 561, 563 (Nev. 1991) (quoting *In re MGM Grand Hotel Fire Litig.*, 570 F. Supp. 913, 927 (D. Nev. 1983) (Bechtle, J.) (“Factors

1 to be considered by the Court in assessing whether a settlement is in good faith is [sic] the
2 amount paid in settlement, the allocation of the settlement proceeds among plaintiffs, the
3 insurance policy limits of settling defendants, the financial condition of settling defendants, and
4 the existence of collusion, fraud or tortious conduct aimed to injure the interests of non-settling
5 defendants.”) (alteration in original)). The Nevada Supreme Court, however, rejected the
6 limitations of California’s five-factor test, ruling instead that “determination of good faith [is]
7 left to the discretion of the trial court based upon all relevant facts available, and . . . in the
8 absence of an abuse of that discretion, the trial court’s findings [will] not be disturbed.” *Id.*

9 **III. ANALYSIS**

10 No party has objected to the Motions for Determination of Good Faith Settlement or the
11 R&R. The Court therefore grants the motions for determination of good faith settlement and
12 adopts the R&R.

13 Plaintiffs and Burns and Huntley represent that Burns and Huntley have good faith
14 defenses but wish to avoid litigation expenses, that the settlement affects only those insurance
15 policies for which Burns was the agent and Huntley was the insured, that there are no insurance
16 policies that might potentially indemnify Burns and Huntley against Plaintiffs’ claims. Burns
17 and Huntley deny liability but will pay the Cartons \$11,000 to buy their peace, with the parties to
18 bear their own fees and costs. The Court finds the agreement to be in good faith.

19 Plaintiffs and Torkelson represent that Torkelson denies liability but will pay the Cartons
20 \$1000 to buy her peace, with the parties to bear their own fees and costs. Torkelson and
21 Plaintiffs represent that Torkelson’s Motion for Judgment on the Pleadings is “str[ong].”
22 Torkelson simply submitted an application on behalf of her father, Thomas Colbert. The Court
23 finds the agreement to be in good faith.

24 Finally, because Defendants Robert L. Eberle, B&B Equities Group, LLC, Global Equity
25 Resources, LLC, Pro Financial Group, Inc., Pro Fi Group, Inc., and Estate Planning Solutions

1 Network, LLC failed to comply with this Court's order to obtain counsel and notify the Court of
2 its retention of counsel, and because they have otherwise failed to participate in discovery, the
3 magistrate judge has recommended striking those Defendants' Answers and entering default
4 judgment against them. For the reasons given in the R&R, the Court agrees.

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Motion for Judgment on the Pleadings (ECF No.
7 157) is DENIED as moot.

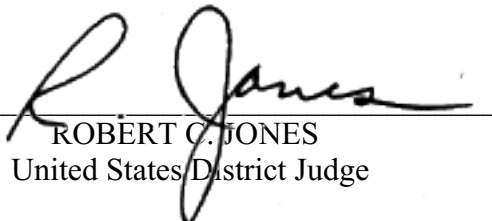
8 IT IS FURTHER ORDERED that the Motion for Leave to file a Second Amended
9 Complaint (ECF No. 163) is GRANTED.

10 IT IS FURTHER ORDERED that the Motions for Determination of Good Faith
11 Settlement (ECF Nos. 165, 167) are GRANTED.

12 IT IS FURTHER ORDERED that the Report and Recommendation ("R&R") (ECF No.
13 181) is ADOPTED. The Answers of Defendants Robert L. Eberle, B&B Equities Group, LLC,
14 Global Equity Resources, LLC, Pro Financial Group, Inc., Pro Fi Group, Inc., and Estate
15 Planning Solutions Network, LLC (ECF Nos. 44, 51, 52, 53, 59, 60) are STRICKEN, and default
16 judgment is GRANTED in favor of Plaintiffs against those Defendants. Plaintiffs shall submit a
17 proposed form of judgment.

18 IT IS SO ORDERED.

19 Dated this 26th day of November, 2012.

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21 
22 ROBERT C. JONES
23 United States District Judge
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